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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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44362	7590	12/23/2010		
Pequignot + Myers LLC 90 North Coast Highway 101 Suite 208 Encinitas, CA 92024			EXAMINER WASEL, MOHAMED A	
			ART UNIT 2454	PAPER NUMBER
			NOTIFICATION DATE 12/23/2010	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/697,270	Applicant(s) RHODA ET AL.	
	Examiner MOHAMED WASEL	Art Unit 2454	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 2454

DETAILED ACTION

This action is responsive to Request for Continued Examination (RCE) filed on July 26, 2010. Claims 1-4, 8, 10-12, 14 and 15 have been amended. Claims 1-15 are pending and presented for examination.

New Ground(s) of Rejections

Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

Title

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

Claim Objections

Claims 2-7 are objected to because of the following informalities: "**A** method according to claim..." needs to be changed to "**The** method according to claim...". Appropriate correction is required.

Claim 8 is objected to because of the following informalities: The comma (,) following the claim limitations on lines 9 and 16 needs to be replaced with semi-colon (;). Appropriate correction is required.

Claims 9-10 are objected to because of the following informalities: "**A** method according to claim..." needs to be changed to "**The** method according to claim...". Appropriate correction is required.

Claims 13-14 are objected to because of the following informalities: "**A** communication/test measurement agent according to claim..." needs to be changed to "**The** communication/test measurement agent according to claim...". Appropriate correction is required.

Art Unit: 2454

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 12-15 are rejected under 35 U.S.C 101 because the claimed invention is directed to non-statutory subject matter.

Claim 12 is directed to a communication test/measurement agent (**software module**), which does not fall within the four statutory classes of 101. Applicant's amendment to claim 12 has been noted but still insufficient to overcome the 101 rejections. It is recommended to amend the claim to read as "A communication test/measurement agent instantiated in a non-transitory storage medium, comprising" to overcome the 101 rejection. Appropriate corrections are required.

Claims 13 and 14 are rejected under the same rationale as claim 12 due to their dependency.

Claim 15 is directed to "A machine-readable storage storing..." which does not fall within the four statutory classes of 101. Applicant's amendment to claim 12 has been noted but still insufficient to overcome the 101 rejections. It is recommended to amend the claim to read as "A communication test/measurement agent instantiated in a non-transitory storage medium, comprising" to overcome the 101 rejection. Appropriate corrections are required.

Claim 15 is directed to "A machine-readable storage storing" which does not fall within the four statutory classes of 101. Upon further review of the instant application, the term "machine-readable storage" is not defined to encompass storage media (volatile and non-volatile). Applicant is advised to direct the claim language to "A **non-transitory** machine-readable storage ..." to overcome the 101 rejection. Examiner notes that such an amendment as suggested by the Examiner will not raise an issue of new matter, even when the specification is silent because the broadest reasonable interpretation relies on the ordinary and customary meaning that includes signals per se. Appropriate corrections are required where applicable.

Art Unit: 2454

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-10 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "providing **the** agent..." in 3 of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 also recited the limitation "providing the agent with a communication unit **enabling communication between...**" in lines 3 and 4 of the claim, which renders the claim indefinite because it is unclear what this limitation pertains to. Appropriate corrections are required where applicable.

Claims 2-7 are rejected under the same rationale as claim 1 due to their dependency.

Claim 8 recites the limitation "directing a third of the requests in not directed to a communication interface, handling the third request..." in lines 21-23 of the claim, which renders the claim indefinite because it is unclear what this limitation pertains to. Appropriate corrections are required where applicable.

Claims 9-10 are rejected under the same rationale as claim 8 due to their dependency.

Claim 15 recited in the preamble "A machine-readable storage storing information enabling a network...", which renders the claim indefinite because it is unclear what the preamble pertains to. Appropriate correction is required where applicable.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent,

Art Unit: 2454

except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Lavian et al, (hereinafter referred to as "Lavian") US Patent No. 7,433,941.

1. As per claim 1, Lavian teaches a method of extending a communication test/measurement agent, comprising:

providing the agent with a communication unit enabling communication between the agent and a network test center or client via a network for operating the agent (**col. 4 line 64 - col. 5 line 14**);

providing the agent with a plurality of communication interfaces, each communication interface for communicating with a different network (**col. 3 line 62 – col. 4 line 4**); and

providing the agent with built-in functionality to enable the agent to automatically recognize and dynamically incorporate a plurality of different interface-specific plugins that are specific to different types of communication interfaces and which enable the network test center or client to initiate monitoring or testing of the different networks, and receive test/monitor data therefrom(**col. 3 line 62 – col. 4 line 4; col. 8 line 60 – col. 9 line 14**).

2. As per claim 2, Lavian teaches a method wherein step c) includes loading code of a plugin into the agent (**col. 7 lines 60-65**).

3. As per claim 3, Lavian teaches a method wherein a plugin is recognized and incorporated after the agent has been deployed for communications test/measurement and without reprogramming the agent (**col. 7 lines 46-58**).

4. As per claim 4, Lavian teaches a method wherein each plugin communicates with an application program that drives the corresponding communication interface (**col. 9 lines 15-24**).

5. As per claim 5, Lavian teaches a method wherein the agent provides a basic API to the network test center or client that is independent of any communication interfaces and wherein the plugins extend the API for the respective types of interfaces (**col. 2 lines 52-67**).

6. As per claim 6, Lavian teaches a method wherein one plugin for a particular type of communication interface allows communication with different communication interfaces of the particular

Art Unit: 2454

type (**col. 3 line 62 – col. 4 line 4**).

7. As per claim 7, Lavian teaches a method wherein an extensible language is used to communicate with the API, wherein a base set of commands of the extensible language corresponds to the built-in functionality, and wherein the recognizing and incorporating of a plugin further comprises extending the extensible language with additional verbs that are specific to the plugin (**col. 8 line 60 – col. 9 line 14**).

8. As per claim 8, Lavian teaches a method of communication with a plurality of network analysis software (**col. 2 lines 52-67**), the method comprising:

 sending a plurality of requests from a communication testing console to a communication agent for monitoring or testing a plurality of different networks (**col. 3 line 62 - col. 4 line 4**);

 receiving the requests at the agent (**col. 3 lines 31-44**);

 directing a first one of the requests to a first communication interface, which enables communication with one of the plurality of different networks (**col. 3 line 62 – col. 4 line 4; col. 6 lines 38-64**),

 directing the first request to a first a plugin of the agent that is specific to the type of the first communication interface for monitoring or testing one of the plurality of different networks (**col. 8 line 60 - col. 9 line 14**);

 directing a second one of the requests to a second communication interface, which enables communication with another one of the plurality of different networks (**col. 3 line 62 – col. 4 line 4**),

 directing the second request to a second plugin of the agent that is specific to the type of the second communication interface for monitoring or testing the other one of the plurality of different networks (**col. 3 line 62 – col. 4 line 4; col. 5 lines 15-52**); and

 directing a third one of the requests is not directed to a communication interface, handling the third request with a common generic portion of the agent (**col. 6 lines 38-64**).

9. As per claim 9, Lavian teaches a method wherein the plugin responds to the first one of the requests with a response received from an application program that drives the communication interface to which the first request is directed (**col. 5 lines 25-40**).

10. As per claim 10, Lavian teaches a method wherein the common generic portion of the agent

Art Unit: 2454

handles the second request by generating a response to the second request (**col. 6 lines 38-64**).

11. As per claim 11, Lavian teaches a method of extending a communication agent that provides a communication point for a console of a communication test/measurement system ,the method comprising:

deploying the communication agent, where the communication agent is deployed on a computing device comprising a communication interface and communicates with the communication interface using a driver application program, and where the console programmatically accesses the agent and accesses the interface through the agent (**col. 3 line 62—col. 4 line 4; col. 8 line 60 – col. 9 line 14**); and

after the deploying, making the deployed communication agent aware of a new communication interface by installing on the computing device plugin software that can handle commands specific to the new communication interface, where the agent self-recognizes the plugin software and self-integrates the plugin software, whereby the plugin software becomes part of the agent and allows the console to send commands to the new communication interface (**col. 5 lines 15-52; col. 6 lines 38-64**).

12. Claim 12 is rejected under the same rationale as claim 1.

13. As per claim 13, Lavian teaches a communication/test measurement agent further comprising an interface table comprising entries, wherein the agent adds an entry in the interface table to correspond to a new plugin which the agent has incorporated (**col. 5 lines 15-24**).

14. As per claim 14, Lavian teaches a communication measurement agent, wherein entries in the interface table identify a plugin for a type of communication interface and a corresponding communication interface of that type (**col. 6 lines 38-64**).

15. Claim 15 is rejected under the same rationale as claim 1.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Please refer to form PTO-892 (Notice of Reference Cited) for a list of relevant prior art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mohamed Wasel whose telephone number is (571) 272-2669. The examiner can normally be reached on Mon-Thurs (7:00 am - 5:30 pm).

Art Unit: 2454

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Avellino can be reached on (571) 272-3905. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free)? If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mohamed Wasel/
Patent Examiner, Art Unit 2454
December 17, 2010